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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,171	07/31/2000	Michael J. Matsko	8611	4793
26884	7590	07/25/2005	EXAMINER	
PAUL W. MARTIN LAW DEPARTMENT, WHQ-4 1700 S. PATTERSON BLVD. DAYTON, OH 45479-0001			GRAYSAY, TAMARA L	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/629,171

Applicant(s)

MATSKO ET AL.

Examiner

Tamara L. Graysay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Preliminary Matters

1. Walker (US-6567787) has been listed on the attached form PTO-892, Notice of References Cited because the patent number listed on the previous form contained an inadvertent error. The examiner apologizes for any inconvenience.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 6-9, 12, 13, 16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US-6567787).
 - a. Regarding claims 1, 13 and 19, Walker teaches a computer implemented method comprising the steps of:
 - i. receiving an input indicative of an event occurring at a point of sale (POS) during a transaction, wherein the event occurring at the POS is a scan operation (c.8, 1.56-60, the POS terminal receives transaction data such as items ordered by a customer and the quantity of each item, transaction data may be received by actuation of keys of the input device, scanning of bar codes or voice input received from a microphone);

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- ii. recording (inherent in the creation and existence of a record) an entry record indicative of the input received at the POS stations during the transaction (c.6, l.53-57, a record of the transaction database defines a transaction performed at the POS terminal, the transaction database typically includes a plurality of records such as the record defining a different transaction);
- iii. associating the retail performance metric (percentage of properly spoken verbal messages) record (330) with the entry record (table 300) (c.5, lines 40-67, the table 300 defines fields for each entry 302,304,306, 308, which specify an operator identifier 320, name 322, authorization level 324, number of transactions 326, number of transactions with properly spoken verbal message 328, percentage of times properly spoken verbal message 330, verbal message complexity 332, voice file 334, weekly bonus 336);
- iv. repeating the steps of receiving, recording the entry record, recording the retail performance metric record, and associating for a plurality of events (c.9, lines 65 to c.10, l.5, a transaction is initiated 902, a spoken prompt is transmitted 904, the audio signal is received 906 is compared with the prompt to determine whether the audio signal corresponds to the prompt 908, if the audio signal does not correspond then another transaction may be initiated 910) during the transaction.

Walker teaches recording a retail performance metric record, the retail performance metric record being a function of the retail performance metric type (figure 3, ref. char. 330, number of transactions properly spoken); a fixed, determined period of time (c.6, l.26-28,

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number of transactions in which a verbal message was spoken properly during a predetermined period of time), and a variable period of time waiting for the occurrence of an event (c.9, l.9-11, audio signal may also represent sound received during a period of time that ends upon occurrence of a predetermined event). Walker lacks performance as a function of elapsed waiting for and receiving input.

Walker's predetermined time period and predetermined event that end the time period are a function of elapsed time, as broadly recited. The measurement over time of an employee performance metric is not novel insofar as the examiner takes Official notice that the computation of a performance metric that includes measuring the metric over time is a well known expedient used for normalizing data to enable comparison of performance among performers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the performance metric record of Walker to include wait time monitoring as a basis for performance monitoring related to the verbal message during the sales transaction, such as suggested by the wait time performance metric in Ozeki and Grant, in order to normalize the data related to the performance metric.

b. Regarding claims 7, 16 and 20, Walker teaches a computer implemented system comprising: a processor for receiving and transmitting data (figure 2, processor 202); a memory coupled to the processor (c.3, l.45-48, the processor 202 is in communication with a data storage device 204; the memory having stored therein sequences of instructions which cause the processor to receive an input, record an entry record, wherein the instruction sequence particulars of the event and metric record are as discussed with regard to claims 1, 13 and 19, above.

- c. Regarding claims 2 and 8, Walker teaches combining the retail performance metric record with the entry record, (c.9, 1.65 – c.10, 1.2, the performance metric is a prompt to be spoken that is transmitted; the entry record is an audio signal that is received and “combined” when it is compared with the prompt to determine whether the audio signal corresponds to the prompt).
 - d. Regarding claims 3 and 9, Walker teaches an entry record including a unique entry identifier value and the associating step comprises including the unique entry identifier field value of the entry record with the retail performance metric record (figure 3, operator identifier, number of transactions in which message spoken properly, and percentage of times message spoken properly).
 - e. Regarding claims 6 and 12, Walker teaches a method and system wherein the entry record after addition of the retail performance metric record comprises an entry identifier field (figure 16, transaction #12345678), an entry type field (figure 16, item description), a time of entry field (figure 16, time 2:09), and an elapsed time field (c.9, 1.9-1.11, the audio signal may also represent sound received during a period of time that ends upon occurrence of a predetermined event).
3. Claims 4, 5, 10, 11, 14, 15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US-6567787), as applied to claims 1, 7, 13 and 16, above, and further in view of Green (WO-97/13229-A1).
- Regarding claims 4, 5, 10, 11, 14, 15, 17 and 18, Walker teaches a method and system that use a database to store records on employee performance metrics and on transactions (c.5,

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1.24-27, the storage device also stores an operator database, an inventory database, a transaction database, a prompt database). Walker lacks adding a pointer or link to the retail performance metric record.

Green, also in the field of POS performance measurement, teaches linking an employee performance metric to a database field (figure 1, p.4, 1.16-23) through use of a graphical user interface (figure 3 depicts a video screen presentation). The performance metric data is linked via the graphical user interface (p.2, the color assignments and performance are cross-correlated with the clerk identification in a digital storage lookup table; the evaluator interacts with the display to review performance) in order to provide a user easy access to the performance data.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Walker to include links and pointers, as taught by Green, in order to permit easy access to the performance metric data. For example, a POS clerk or manager can easily interface with the information to determine how they are performing with respect to personal goals, company goals, and other clerks or managers.

Response to Arguments

4. Applicant's arguments filed 10 May 2005 have been fully considered but they are not persuasive.

a. At page 13, applicant argues that the present invention tracks a plurality of retail performance metric records for multiple events within a transaction. As the examiner has pointed out above, Walker meets this limitation insofar as the transaction is a sale and

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each event within the transaction is met by an audio signal transmission and a prompt, which, as parts of each performance metric record, are compared to each other.

b. At page 17, applicant requested prior art to support the Official notice position that it is old and well known in the art to compute a performance metric consisting of measuring the waiting time it would take for an event to occur. Cited in support of the Official notice are Ozeki (article, Customer service evaluation in the telephone service provisioning process) which teaches performance as a function of time elapsed waiting for input (table 1 for example) in the customer service industry; and Grant (article, Computerized performance monitors as multidimensional systems: derivation and application) teaches measurement of average wait time (p215, first paragraph, for example) in the customer service industry.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

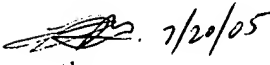
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Siefert (US-6047261) teaches POS performance metric measurement including how long it takes a worker to input desired information (c.4, 1.57-60), network application (c.5, 1.54-62), and slow response time (c.6, 1.62-67).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (571) 272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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